IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

OP.No. 31899 of 1999(V)

PETITIONER:

ABRAHAM SIMON, ARACKAPERUMETH HOUSE, IYTHALA,
PAZHAVANGADI P.O., RANNI.

BY ADV. SRI.M.C.JOHN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY SECRETARY, FOREST & WILD LIFE DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. DIVISIONAL FOREST OFFICER, THENMALA DIVISION, THENMALA.

BY GOVT.PLEADER SMT. R. BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS. 54199 OF 1999 AND 46080 OF 2000 IN OP 31899 OF 1999

DISMISSED

13.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE EXTRACT FROM THE SCHEDULE.

EXT.P2 TRUE COPY OF THE ORDER NO. C1-5515-80 DATED 11.3.86 OF THE 2ND RESPONDENT.

EXT.P2(a) TRUE COPY OF THE LETTER NO. 5275/91/86/ fe &wl DATED 24.7.1986

EXT.P3 TRUE COPY OF THE ORDER c105515/80 DATED 28.6.89 OF THE2ND RESPONDENT.

EXT.P4 TRUE COPY OF THEREPRESENTATION DATED 26.7.1989 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF THE JUDGMENT DATED 2.8.89 IN OP 5992 OF 1989 L

EXT.P6 TRUE COPY OF THE REPORT.

EXT.P7 TRUE COPY OF THE REPORT QC306219/83 DATED 3.2.99

EXT.P8 TRUE COPY OF THE REPORT NO. C1-35428/89 DATED 17.5.99

EXT.P9 TRUE COPY OF THE ORDER NO.G.O.RT. 485/99/ & F& WLD DATED 1.12.99

EXT.P10 TRUE COPY OF THE CHALAN DATED 31.8.2000 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 31899 OF 1999

Dated this the 13th day of March, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner is challenging Ext.P3 order whereunder the Divisional Forest Officer has demanded an amount of Rs. 1,32,359/- towards higher labour charges paid and Rs. 5,87,534/- towards loss sustained by the Government on account of petitioner's failure to execute the work entrusted to him. Petitioner admittedly undertook the work of collecting various varieties of timber from the forest and stacking it at the various forest depots by contract dated 15.2.1984. The time for completion of work was upto 14.11.1984. However, petitioner failed to execute the work in time and kept on applying for extension of time for completion of work. This was liberally granted and the total period of extension granted by various authorities including Govt. is 14 months. Inspite of extension of time for such a long period, petitioner admittedly did not carry out the work. Therefore contract was cancelled in terms of tender conditions and work was rearranged at the

risk and cost of the petitioner. The differential labour cost borne by the Government for getting the same work done by another contractor is Rs. 1,32,359/-. Petitioner has no dispute that the demand is not in terms of tender conditions accepted by the petitioner. Therefore differential labour cost borne by the Government is liquidated damages, which petitioner agreed to pay at the time of execution of contract as tender conditions which contain the provision form part of the contract. In the circumstances, petitioner has no escape from paying Rs. 1,32,359/- and therefore the challenge against the demand of this amount is rejected.

2. So far as the demand of loss of Rs. 5,87,534/- sustained by the Government is concerned, the same represents loss of materials suffered by the Government on account of deterioration and destruction of items on account of delay in recovery. In principle, petitioner is liable to compensate the Government because loss under tender conditions is to be borne by the contractor if he commits breach of contract. However, it is seen that details of working out of such loss are not furnished in Ext.P3. It is stated that there is reduction in value

of materials on account of deterioration consequent upon delay in lifting the materials from the forest. Petitioner has also no case that there was no decay or deterioration of timber on account of delay in lifting the materials and stacking it at the forest depots. Timber being a perishable item suffers damage if it is exposed for a long period to Sun and rain. Therefore loss would have certainly happened on account of delay in lifting the cut wood from the forest and stacking it. However, having regard to the fact that details are not furnished in Ext.P3 order in regard to loss occurred in the transaction that took place nearly 8 years back, there is no scope for remanding the matter as no evidence will be available as of now. In the circumstances, I feel some reduction is called for from the compensation ordered to be paid by the petitioner. Therefore Ext.P5 is modified by reducing the compensation payable for the loss sustained by the Government by 50% of the amount demanded, that is 50% of Rs. 5,87,534/-, provided petitioner pays balance 50% of the loss sustained by the Government along with differential cost of labour charges, within two months from now. If petitioner clears the arrears that is Rs. 1,32,359/- together with 50% of Rs. 5,87,534/-

within two months from now, then no collection charges or interest should be charged from the petitioner. However, if the petitioner fails to remit the amount as above, then the incentives granted in the form of reduction and waiver of collection charges and interest will stand vacated automatically and respondents will be free to proceed for recovery of entire amount due after two months.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge